IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 831 (S/S) of 2006

Salim Khan,
S/o late Sri S. Khan, serving as Senior Clerk,
Government Girls Inter College,
Nainital. **…….Petitioner**

V e r s u s

1. Director, School Foundation, Uttaranchal, Dehradun.
2. Joint Director of Education, Kumaon Region, Nainital.
3. Smt. Mahorama Yadav, Principal, GGIC, Shaktifarm, District – Udham Singh Nagar.

…….Respondents

Hon'ble M.M. Ghildiyal. J.

1. Heard Sri Manoj Tiwari, learned counsel for the petitioner and Sri Paresh Tripathi, learned counsel for respondents.
2. Learned counsel for the petitioner prays for and is permitted to delete the name of respondent no. 3.
3. By means of this writ petition, the petitioner has prayed for the following reliefs:

   A. *to issue a writ, order or direction in the nature of Certiorari for quashing the order dated 16.06.2006 passed by respondent no. 2 (Annexed as Annexure No. 15 to this writ petition)*

   B. *to issue a writ, order or direction in the nature of Mandamus commanding the respondent no. 2 to grant all consequential benefits including arrears of salary and promotion to the petitioner.*

C. *to issue a writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

D. *Award the cost of the writ petition in favour of the petitioner.*

4. On the basis of alleged inquiry report submitted by the Inquiry Officer – Dr. Kusum Pant on 24.10.2003, Joint Director of Education, Kumaon Region has passed final order dated 16.06.2006 awarding major punishment to the petitioner.

5. Petitioner has challenged the order passed by Joint Director, on the ground that the said order has been passed on the basis of inquiry report dated 24.10.2003 submitted by Inquiry Officer and the inquiry report is liable to be vitiated on two grounds, firstly that procedure prescribed for the inquiry has not been followed by the Inquiry Officer. Secondly, the reply to the chargesheet submitted by the petitioner has not been considered by the Inquiry Officer and no opportunity of personal hearing was given to him though he applied for that.

6. Sri Paresh Tripathi, learned Brief Holder for the respondents has submitted that petitioner has alternative remedy to file appeal before the Competent Authority under Rule 11 of U.P. Government Servant (Discipline and Appeal) Rules, 1999. Rule 11 sub Clause 1 provided as under:

"Except the order passed under these rules by the Governor, Government Servant shall be entitled to file appeal to the next

higher authority from an order passed by the Disciplinary Authority."

7. Petitioner has alternative remedy to prefer appeal before the Higher Authority i.e. Director of Education and he may file the same within a period of fifteen days from today.

8. Considering the facts and from perusal of record, I think it just and proper to stay the operation of order dated 16.06.2006 passed by Joint Director of Education, Kumaon Region, Nainital till the disposal of appeal, which may be filed by the petitioner before Director of Education.

9. With this direction the writ petition is finally disposed of. No order as costs.

(M.M. Ghildiyal, J)

June 27, 2006
SKSharma